

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2008CF2636
)	EEOC NO.: 21BA81523
TYRONE AUSTIN)	ALS NO.: 10-0136
)	
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Sakhawat Hussain, M.D., Spencer Leak, Sr., and Diane M. Viverito presiding, upon Tyrone Austin's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")^[1] of Charge No. 2008CF2636; and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, **THEREFORE**, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

LACK OF SUBSTANTIAL EVIDENCE

In support of which determination the Commission states the following:

1. On March 26, 2008, the Petitioner filed a charge of discrimination with the Respondent. The Petitioner alleged that Interpark Incorporated ("Employer") subjected him to unequal wages (Count A), placed him on a 90-day Performance Improvement Plan (Count B); placed him on 90 days probation (Count C); and discharged him (Count D), because of his race, Black, in violation of Section 2-102(A) of the Illinois Human Rights Act ("Act").
2. On January 27, 2010, pursuant to the Petitioner's request, the Respondent administratively closed Count A of the charge.
3. On January 29, 2010, the Respondent dismissed Counts B, C, and D of the Petitioner's charge for Lack of Substantial Evidence. On February 23, 2010, the Petitioner filed this timely Request.
4. The Petitioner was employed as a Facility Manager for the Employer.

^[1] In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge who is requesting review of the Department's action shall be referred to as the "Petitioner."

5. At all times relevant to the Petitioner's charge, the Employer had in place a Standard of Conduct Policy (the "Policy"). The Policy provided for progressive discipline, but also provided that ... "certain substandard performance and/or misconduct can lead to immediate termination of employment."
6. On November 24, 2007, the Employer placed the Petitioner on a 90-day Employee Improvement Plan ("PIP"). On the same day, the Employer placed the Petitioner on 90 days Probation.
7. The Employer stated it placed the Petitioner on the 90-day PIP and 90 days probation because the Petitioner's job performance was poor.
8. On January 11, 2008, the Employer discharged the Petitioner.
9. The Employer stated it discharged the Petitioner because on December 23, 2007, the Petitioner was insubordinate to a manager.
10. In Count B, the Petitioner alleged he was placed on the 90-day PIP because of his race, Black. In Count C, the Petitioner alleged he was placed on 90 days probation because of his race. Finally, in Count D, the Petitioner alleged he was discharged on January 11, 2008, because of his race.
11. In his Request, the Petitioner argues the Respondent failed to understand the nature of his case. The Petitioner argues the Respondent's investigation was incomplete. The Petitioner also contends the Respondent did not allow the Petitioner an opportunity to present his *prima facie* case. The Petitioner argues there is substantial evidence of discrimination.
12. In its Response, the Respondent requests that the Commission sustain the dismissal of the Petitioner's charge for lack of substantial evidence.

Conclusion

The Commission concludes the Respondent properly dismissed the Petitioner's charge for lack of substantial evidence. If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. See 775 ILCS 5/7A-102(D). Substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a conclusion. See In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747, 1995 WL 793258, *2 (March 7, 1995).

As to all Counts B-D, the Petitioner's case fails because the evidence is insufficient to establish even a *prima facie* case of race discrimination. See Marinelli v. Human Rights Commission, 262

Ill.App.3d 247, 634 N.E.2d 463 (2nd Dist. 1994). In particular, there is no evidence that similarly situated non-Black facility managers were treated more favorably than the Petitioner under similar circumstances.

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show the Respondent's dismissal of his charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

WHEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of the Petitioner's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and Interpark Incorporated, as Respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

)

)

)

Entered this 22nd day of September 2010

Commissioner Sakhawat Hussain, M.D.

Commissioner Spencer Leak, Sr.

Commissioner Diane M. Viverito